REMARKS

This Amendment is submitted with a Request for Continued Examination. This Amendment is responsive to the Final Office Action dated January 26, 2009. Applicant has amended claims 1, 19, 38, 55, and 56. Claims 1, 5-19, 23-38, and 42-56 are pending upon entry of this Amendment.

Claim Rejections Under 35 U.S.C. § 103

In the Final Office Action, the Examiner rejected claims 1, 5-13, 16, 18, 19, 23-30, 32, 35, 36-38, 42-46 and 48-56 under 35 U.S.C. § 103(a) as being unpatentable over Meadows et al. (US 6,381,496, hereinafter "Meadows") in view of Sheldon (US 5,593,431), or in the alternative, over Meadows in view of Sheldon and Daignault, Jr. et al. (US 6,748,276, hereinafter "Daignault").

The Examiner also rejected claims 17 and 33 under 35 U.S.C. § 103(a) as being unpatentable over Meadows in view of Sheldon, as applied to claims 16 and 32 above, and further in view of Schallhorn (US 6,120,467).

The Examiner also rejected claims 15 and 34 under 35 U.S.C. § 103(a) as being unpatentable over Meadows in view of Sheldon, as applied to claims 1 and 19 above, and further in view of Stein (US 2002/0038137).

The Examiner also rejected claims 14, 31 and 47 under 35 U.S.C. § 103(a) as being unpatentable over Meadows in view of Sheldon, as applied to claims 8, 27 and 43 above, and further in view of Christopherson et al. (US 5,944,680).

Applicant respectfully traverses these rejections to the extent they are considered applicable to the claims as amended. The applied references fail to disclose or suggest the inventions defined by Applicant's amended claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

Independent claims 1, 19, 38, and 56

Applicant maintains that claims 1, 19, 38, and 56 as previously presented were patentable for at least the reasons stated in Applicant's previous Amendment. In the Final Office Action, the Examiner interpreted the limitations drawn to monitoring therapy "when the event was initially defined" broadly as not being confined to parallel, simultaneous definition of the event and monitoring therapy, and instead including some arbitrary time before provision of therapy.

The Examiner argued that this interpretation was consistent with the specification, which, in some passages, describes that these steps occur during a learning mode, but not necessarily simultaneously and in parallel.

Applicant does not agree with or acquiesce in this interpretation of the claims as previous presented or the specification. Nevertheless, in order to overcome the Examiner's interpretation and advance the prosecution of this application, Applicant has amended independent claims 1, 19, 38, and 56. The amended claims clarify that the therapy delivered by the medical device is monitored while the output of the sensor is monitored during the event to initially define the event. Support for the amendments to the independent claims may be found at, as examples, paragraphs [0035] and [0059] of the specification.

Applicant submits that Meadows and Sheldon fail to teach or suggest each and every feature of independent claims 1, 19, 38, and 56, for at least the reasons stated in Applicant's previous Amendment. In particular, neither Meadows nor Sheldon teaches or suggests monitoring therapy delivered by a medical device while the output of the sensor was monitored during the event to initially define the event, as required by independent claim 1, or the similar requirements of the other independent claims.

Meadows does teach or suggest monitoring therapy delivered by a medical device while the output of the sensor was monitored during the event to initially define the event, as required by the independent claims, at least because, as admitted by the Examiner, Meadow's does not initially define an event based on monitoring the output of a sensor. Furthermore, Sheldon does not contemplate monitoring therapy during the calibration process depicted and described at FIG. 13 and col. 15 lines 11-47 of Sheldon, which the Examiner argued is an initial definition of an event. Nor does Sheldon disclose or suggest generating therapy information based on therapy monitoring during the calibration, or associating the generated therapy information with the newly defined event in a memory.

Daignault also fails to disclose or suggest monitoring therapy delivered by a medical device while the output of the sensor was monitored during the event to initially define the event, as required by independent claim 1, or the similar requirements of the other independent claims. The Examiner cited to col. 12, l. 44 – col. 13, l. 30 of Daignault as teaching monitoring therapy delivered by a medical device and generating therapy information based on the monitoring of the therapy. While Applicant does not necessarily agree with this interpretation of Daignault,

Applicant notes that Daignault does not teach or suggest that the therapy definition described in the cited portion of Daignault occurs while the output of a sensor is monitored during an event to define the event. Accordingly, none of the cited references discloses or suggests monitoring therapy delivered by a medical device while the output of the sensor was monitored during the event to initially define the event, as required by independent claim 1, or the similar requirements of the other independent claims.

For at least these reasons, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection for independent claims 1, 19, 38, and 56.

Dependent claims

The dependent claims are allowable for at least the reasons stated above with respect to the independent claims. Christopherson, Stein and Schallhorn fail to provide any teaching that would overcome the deficiencies of Meadows, Sheldon and Daignault with respect to the independent claims. Furthermore, the dependent claims recite features that are not disclosed or suggested by the applied references.

For example, with respect to claims 14, 31 and 37, Christopherson at col. 26, lines 21-56 describes delaying therapy based on an artifact counter. If the respiratory waveform continues to be too variable or multiple motion artifacts are occurring while in suspension mode, then the artifact counter will cause the algorithm to delay therapy. Accordingly, contrary to claims 14, 31, and 37, Christopherson receives no value and time from the user, and also does not change a therapy based on a time received from a user. Instead, Christopherson delays therapy based on the characteristics of a respiratory waveform.

For at least these reasons, the applied references fail to teach or suggest every feature of Applicant's claims, and provide no rational reason to arrive at the features of the claims. Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejections of Applicant's claims.

CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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